

Supreme Court, U. S.

FILED

JAN 22 1979

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1011

MARY KATHRYN BOYCE,
Petitioner,

v.

BONDED ADJUSTMENT ASSOCIATES, INC.,
Respondent.

PETITION FOR A WRIT OF THE CERTIORARI TO
THE COURT OF SPECIAL APPEALS OF MARYLAND

SUPPLEMENTAL APPENDIX

WILLIAM A. BURLESON
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003
Attorney for Petitioner

33a

EXHIBIT 1

**OFFICE OF
NORMAN L. PRITCHETT
CLERK OF THE CIRCUIT COURT
OF PRINCE GEORGE'S COUNTY**
Upper Marlboro, Maryland 20870
Telephone: (301) 952-3318

**SHIRLEY P. HILL
CHIEF DEPUTY**

February 17, 1978

William A. Burleson, Esquire
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Re: Bonded Adjustment Association, Inc.

vs

Ralph E. Boyce, et al
Law No. 66541

Dear Mr. Burleson:

You are advised that the record in the above described case has this day been transmitted to the Court of Special Appeals of Maryland.

A copy of the docket entries and index is enclosed.

Very truly yours,

/s/ Norman L. Pritchett
Norman L. Pritchett, Clerk

NLP: pa

Enclosures

cc: Gary V. Ward, Esquire
Mark L. Phillips, Esquire

EXHIBIT 2

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S
COUNTY, MARYLAND

BONDED ADJUSTMENT	:	
ASSOCIATION, INC.	:	
Plaintiff	:	
VS	:	Law No. 66541
	:	
RALPH E. BOYCE, ET AL	:	
Defendant	:	

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EXHIBIT 3

COURT OF SPECIAL APPEALS

Annapolis, Maryland 21404

Julius A. Romand
Clerk

No. 1376, September Term, 1977

Ralph E. Boyce et ux

William A. Burleson, Esq.
Mark L. Phillips, Esq.
Attorneys for Appellant

vs.

Bonded Adjustment Association,
Inc.Gary V. Ward, Esq.
Attorneys for Appellee

The Record in the captioned appeal was received and docketed on Feb. 21, 1978.

The brief of the APPELLANT is to be filed with the office of the Clerk on or before April 3, 1978

The brief of the APPELLEE is to be filed with the office of the Clerk on or before 30 days after filing of appellant brief (Rule 1030 a 2).

This appeal has been set for argument before this Court during the week of June 12, 13, 14, 15, 16, 19, 1978.

Stipulations for extensions of time within which to file briefs will not be granted where the request will delay argument (Rule 1030(c)(1)).

Counsel is likewise notified to advise the office of the Clerk (Pursuant to Rule 1047) of intent to submit on brief at the time of filing his brief. No submission on brief will be accepted within ten (10) days prior to the date of argument without specially obtained permission of Court.

/s/ Julius A. Romano
JULIUS A. ROMANO,
Clerk of the Court of
Special Appeals of Maryland

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A collection agency, by regularly taking assignments of accounts for collection for no present monetary consideration, bringing suit in its own name, employing an attorney for the purpose of conducting and controlling the flow of litigation and, pursuant to a running agreement, deducting a percentage of the money collected and remitting the balance to the creditor is engaged in the unauthorized practice of law	4
B. Presented:	
Whether the Court below erred when it found that Appellants, though having alleged and proven that they had been victimized by a calculated course of conduct constituting the unauthorized practice of law, had failed to state a cause of action in tort entitling them to the recovery of compensatory and punitive damages.	5
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EXHIBIT 4

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

RALPH E. BOYCE, et al.	:
Appellants	:
vs.	: September Term,
	: 1977, No. 1376
BONDED ADJUSTMENT ASSOCIA-	:
TION, INC.	:
Appellee	:

AFFIDAVIT OF MARK LEE PHILLIPS

Mark Phillips, being first duly sworn, deposes and says:

I phoned the office of the Clerk of the Court for Prince George's County in January, 1978, and was informed that all original papers in the proceedings would be transmitted to the Court of Special Appeals. This was confirmed by a letter signed by the Clerk of the Circuit Court for Prince George's County dated February 17, 1978 which had attached thereto copies of docket entries and the record index of the proceedings. The office of the Clerk of the Circuit Court for Prince George's County has informed me that the Court of Special Appeals received the record in this case on February 21, 1978, and this was confirmed by a notice from the Court of Special Appeals showing the receipt and docketing of said record.

On at least two occasions I called the office of the Clerk of the Court of Special Appeals, and was advised that the complete record of the proceedings below had been received. I was also told that an appendix in this case was unnecessary inasmuch as the entire record of the proceedings including the Order and Opinion of the Honorable Ernest A. Lovelace,

Jr. dated December 5, 1977 and all motions filed in the case had been received and docketed. On April 12, 1978, I personally filed Appellants Brief which was accepted by the Office of the Clerk of the Court of Special Appeals as being in due form.

Upon Motion, the time for filing Appellee's brief was extended to June 1, 1978. Appellants' counsel did not receive Appellee's brief within the time required to respond as specified by Maryland Rule 1030 a. 3 and Appellants were not given the chance to file a Reply Brief before the date scheduled for Oral Argument.

At Oral Argument, the Court stated it did not have the record of the proceedings below before it, and could not rule on the merits of the case.

/s/ Mark Lee Phillips
MARK LEE PHILLIPS

Subscribed and Sworn to before me, in my presence, this _____ day of _____, 1978, a Notary Public in and for the _____ of _____.

NOTARY PUBLIC

COURT OF SPECIAL APPEALS
OF MARYLAND

Julius A. Romand
Clerk

Annapolis, Md. 21401
Telephone: 269-3646

Hoard E. Friedman
Chief Deputy

Thayer A. Larrimore
Ann C. Simmons
Deputies

June 20, 1978

William A. Burleson, Esquire
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Mark Lee Phillips, Esquire
4809 Flanders Avenue
Kensington, Maryland 20795

Re: Ralph E. Boyce et ux, v. Bonded Adjustment
Association, Inc.
No. 1376, September Term, 1977

Dear Counsel:

This is to advise that under date of June 19, 1978, Chief Judge Richard P. Gilbert, by his initials, endorsed on your Motion to Stay Further Proceedings, etc., in the captioned case, the following: "6/19/78. Denied, RPG."

Very truly yours,

/s/ Julius A. Romano
Julius A. Romano
Clerk

JAR/nze

cc: Alan C. Drew, Esquire

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1376
September Term, 1977

RALPH E. BOYCE, ET AL.
V.
BONDED ADJUSTMENT
ASSOCIATION, INC.

Mason
Liss
MacDaniel,
JJ.

Per Curiam

Filed: July 5, 1978

Bonded Adjustment Association, Inc. (appellee) held an assignment from Keystone Wood Apartments, Inc., purporting to authorize it to collect a claim for rent owed to Keystone by Ralph E. Boyce and his mother, Mary Kathryn Boyce (appellants).

Appellee filed suit against appellants in the District Court of Maryland for Prince George's County. Appellants filed an answer and a counter-claim, requesting a jury trial, and the case was transferred to the Circuit Court for Prince George's County. Appellants filed a motion for summary judgment and other relief. Appellee filed an opposition to this motion and filed its own motion for summary judgment, along with a motion to dismiss defendants' (appellants') counter-claim. Appellants filed an opposition to appellee's motion to dismiss the counter-claim. The motions were set for hearing on October 3, 1977, and the case was set for a jury trial on October 4, 1977. After the hearing of the motions, the trial date was held in abeyance until the court ruled on the motions. Appellee acknowledged and admitted that it had sued the wrong party appellant, Mary Kathryn Boyce, and dismissed its claim against her.

On December 6, 1977, an opinion and order was filed by the trial court in which the appellee's claim was dismissed on the ground that the appellee was in the unauthorized practice of law. This opinion and order further dismissed the appellants' counter-claim for compensatory and punitive damages, stating that the appellants had not stated a cause of action entitling them to money damages. Appellants filed this appeal, claiming that the trial court's ruling dismissing their counter-claim was in error and in violation of their constitutional rights under the Constitutions of the State of Maryland and of the United States.

Maryland Rule 1028b. states:

"b. *Contents.*

1. What to Be Included.

The printed extract shall contain such parts of the record as may reasonably be necessary for

the determination of the questions presented by the appeal, and shall include:

(a) The judgment appealed from, together with the opinion or charge of the lower court, if any.

(b) So much of the evidence, pleadings or other parts of the record as is material to any question the determination of which depends upon the sufficiency of the evidence, pleadings or other matter contained in the record to sustain any action, ruling, order or judgment of the lower court.

(c) Such other parts of the record as may be designated by the parties pursuant to section c. of this Rule."

Appellants have failed to comply with rule 1028 in its entirety. There has been no filing of the judgment appealed from, with the order and opinion of the trial judge. Further, there has been no filing of any of the motions with the record that is in front of this Court, and it is impossible to make any determination of the issues.

Maryland Rule 1028i., subsection 2 states the penalty for the failure to comply. We shall invoke that penalty and dismiss this appeal.

APPEAL DISMISSED.
COSTS TO BE PAID BY
APPELLANTS.

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

KATHERINE BOYCE	:	
and	:	
RALPH E. BOYCE	:	
	:	
Appellants	:	September Term,
vs.	:	1977
	:	No. 1376
BONDED ADJUSTMENT	:	
ASSOCIATION, INC.	:	
Appellee	:	

MOTION FOR RECONSIDERATION

Before a three judge panel of this Court on June 15, 1978, Appellant was told that there was no record of the proceedings below, and this Court could not decide the issue. Appellant asked for permission to file a Reply Brief to appellee's brief and stated that their request was timely for the reply.

On June 19, 1978, Appellant filed a written motion asking for leave to file a Reply Brief and ask that the Court stay further proceedings until it obtained the complete record of the proceedings below. On June 19, 1978 this motion was denied through the clerk of the Court.

On July 5, 1978, this panel dismissed appellants' appeal stating,

"there has been no filing of the judgment appealed from, with the order and opinion of the trial judge. Further, there has been no filing of any of the motions with the record that is in front of this Court, and it is impossible to make a determination of the issues."

On February 17, 1978, the clerk, of the Circuit Court of Prince George's County notified the appellant that the record had been transmitted to the Special Court of Appeals.¹ The clerk enclosed copies of the docket entry and index of the record, designating 206 pages of the record.² In an undated letter appellant was notified that the Court of Special Appeals had received and docketed the record below, told appellant to file his brief by April 3, 1978 and set argument for the week of July 12, 1978.³ Appellant confirmed his record of this index of record prepared for the Court of Special Appeals and designated and referred to this record in his brief. The appellees brief was filed on July 1, 1978 and on April 12, 1978 appellant filed his brief with the clerk, Court of Special Appeals. The appellant had been earlier informed by the clerk, Court of Special Appeals, that appellate did not have to file an appendix of record, because the court had already received the complete record from the lower court.⁴

The clerk, after examining appellants brief, accepted it as being in proper form. The brief had been arranged and designated as the record appeared before the appellate court. On page 8 of the appellant's brief that part of the opinion and order of the lower court, page 8 of the opinion page 198 of the record was designated and referred in pertinent part;

"no authority has been cited to the Court which defines unauthorized practice of law to be a tort. Hence, the Court concludes that defendant has not stated a cause of action which can entitle him to money damages."

The appellee accepted the statement of the case presented by appellants, did not duck, but addressed and confronted the issue presented by the appellants to this court.

"Whether or not the Court below erred in its finding that unauthorized practice of law is not a tort and, therefore, that the appellant was not entitled to monetary damages."

As an appendix to appellees brief is a copy of appellant's counterclaim (App.1). Appellant in his brief had previously indexed the pertinent *Authorities in Record Before Trial Court* table of contents (iii) in his brief. Anyway, this index of record conforms to the index of record filed and docketed with the clerk of the Court of Special Appeals on April 3, 1978. Again, appellant in his brief, had designated those pertinent portions of this record filed and docketed by the Special Court of Appeals, and had adopted this index of record.

Appellants, submits that there had been received and docketed by the Court of Special Appeals the entire record, including the order and opinion of the trial judge, a copy of the docket entries and an index of this entire record, for which this panel could make "a determination of the issues."

Appellants submit, that this dismissal of their appeal as it stands; terminates their cause of action in which they were not permitted the opportunity to amend their counter claim prior to trial by jury, denied them procedural due process of law as well as ignoring their protected human rights, all of which are preserved and granted to them by the Constitution of the United States and the Constitution of the State of Maryland.

Appellants respectfully request that this court set aside this order of dismissal.

Respectfully Submitted,

/s/ William A. Burleson
William A. Burleson
Attorney for Appellants
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003
544-4111

/s/ Mark Lee Phillips
Mark Lee Phillips
Attorney for Appellants
1073 Rockville Pike
Rockville, Maryland 20852
942-4732

Attachments:

- ¹ Letter dated February 17, 1978 from Norman L. Pritchett, Clerk.
 - ² Index of Record
 - ³ Undated letter from Julius A. Romano, Clerk
 - ⁴ Affidavit of Mark Lee Phillips
- The Order of Dismissal is enclosed.

COURT OF SPECIAL APPEALS OF MARYLAND

Howard E. Friedman
Clerk

Annapolis, Md. 21401
Telephone 269-3646

David L. Terzian
Chief Deputy

Thayer A. Larrimore
Deputy

August 3, 1978

William A. Burleson, Esquire
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Mark Lee Phillips, Esquire
1073 Rockville Pike
Rockville, Maryland 20852

Re: Ralph E. Boyce et al. v. Bonded Adjustment Association, Inc.
No. 1376, September Term, 1977

Dear Counsel:

Your motion for reconsideration was denied by the Panel on August 2, 1978.

Very truly yours,

/s/ Howard E. Friedman
Howard E. Friedman
Clerk

HEF/nze

cc: Alan C. Drew, Esquire